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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1949.

## Nos. 467 MISC.

4278 HAZEL BUILDING CORPORATION, a CORPORATION, L. L. VANDERVOORT, AND HAZEL-CREST HOTEL CORPORATION, A CORPORATION,

*Petitioners,*

*vs.*

ALBERT BEREST, KATHERINE M. BOGDAN, MAUD A. SULLIVAN, NITTA BEALES, J. W. DOWNS AND B. McTAGGART, FLORENCE B. ANDREWS, RUTH A. JUBB, FLORENCE M. RADCLIFFE, DR. EDWARD SAGER, KATHERINE E. STIMSON, KENNETH ANDERSON, R. M. SCALLON, EUGENIA T. AND FRANCES SCHIERSTEIN, SIMON S. FROLICH, EDWARD KRAUSS, JOSEPH G. BEZARK, MAX SINZHEIMER, ROSELLA PEARSON, OLIVE MARSHALL, DAVID J. DAVIS, E. J. RYAN, L. J. CALDWELL, JOHN VAUDREUIL, MINERVA L. HERRMANN AND LORETTA L. HERMANN,

*Respondents.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, AND BRIEF IN SUPPORT THEREOF.**

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*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI.

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*To the Honorable Chief Justice and Associate Justices of the United States:*

Petitioners, 4278 Hazel Building Corporation and Hazel-Crest Hotel Corporation, petition this Court for the issuance of a Writ of Certiorari to the United States District

Court for the Northern District of Illinois, Eastern Division, to review its order overruling the petitioners' motion to dismiss the action for want of jurisdiction, to the end that its order be reversed with directions to dismiss the proceeding for lack of jurisdiction.

## SUMMARY OF THE MATTER INVOLVED.

Twenty-three tenants joined in one complaint consisting of twenty-three separate counts for treble damages against petitioners under Section 205 of the Housing and Rent Act of 1947 (50 U. S. C. A. App. § 1895). None of the plaintiffs in each of the counts have the required jurisdictional amout of $3,000.00. Subsequent to the filing of the complaint, the Court permitted three additional plaintiffs to join by two separate counts, over the objection of the petitioners. The motion to dismiss the action for lack of jurisdiction was on the ground: (1) that none of the plaintiffs possessed the jurisdictional amount of $3,000 and that their claims may not be aggregated for the jurisdictional amount; and (2) that it was improper to join the 23 separate actions under one complaint, and to later join additional parties with distinct causes of action, and that such a suit may not be filed in the absence of the jurisdictional amount. Petitioners relied on the decision in *Field* v. *Washington,* 173 F. (2), 701, in support of their motion to dismiss. Before the Court ruled on the motion, the Court of Appeals for the 7th Circuit reached the opposite conclusion, disagreeing with the decision in the *Field* case, and held that jurisdiction existed, regardless of the amount. (*Adler* v. *Northern Hotel Co.,* 175 F. (2) 619). The District Court was bound by the decision of the Court of Appeals for the same Circuit and over-

ruled the motion to dismiss, and at the same time allowed the filing of the supplement to the Complaint by adding additional plaintiffs with two additional separate counts.

The principal stockholders of two corporations, petitioners herein, are also owners of two other hotels where similar suits were instituted by twenty-eight tenants (*Henderson* v. *Belmar Building Corp.*) involving the identical issues, and the District Court likewise overruled the motions to dismiss. There are pending many other suits involving the identical questions, and it would be necessary in each of the cases to proceed with the trial, thereafter appeal to the court which had already decided the jurisdictional question in the affirmative, and thereafter apply for a review here on certiorari because of the conflict in the decisions. This would not only throw a great hardship on the parties, but also on the courts, which would be required to go through with trials and useless appeals in order to obtain a review in this court on the jurisdictional question.*

In addition to the decision in the *Fields* case, *supra,* the Third Circuit also rendered another decision, which held that jurisdiction was lacking (*Koster* v. *Turchi,* 173 F. (2) 608). The Court of Appeals for the Fifth Circuit is evidently in accord with the Third Circuit, that a $3,000 jurisdictional amount is necessary to confer jurisdiction (*Steinfield* v. *Haynman,* 175 F. (2) 768). The District Court of Kentucky which had before it the views of the Third Circuit and the views of the Seventh Circuit adopted the views of the former and dismissed the action for want of jurisdiction (*Hershenrader* v. *Campbell,* 85 F. Supp. 75). Some of the district courts are following the lead of the Third

* Before realizing that we could petition for the Writ directly to the District Court under § 1651, we went through the formality of abiding by the motion to dismiss in another case, suffered a judgment to be entered, filed the record in the Court of Appeals, and filed simultaneously with this Petition, a Petition for a Writ to the Court of Appeals.

Circuit and others are following the lead of the Seventh Circuit, and there is a great deal of confusion as a result of these conflicting decisions.

The Federal Courts are clogged with cases of this type, and if the jurisdictional amount is indispensable, then they should be relieved of the burden, and the parties should not be compelled to go through expensive trials for the purpose of getting a final judgment and then prosecute an appeal to a Court of Appeals which has already determined that issue in conflict with the decisions of two other circuits, and this court should grant the writ to avoid great hardship.

## QUESTIONS INVOLVED.

1. Whether under the Housing and Rent Act of 1947, the jurisdictional amount of $3,000 as required under Section 1331 (T 28, U. S. C. A. § 1331) is indispensable in order to confer jurisdiction on the district courts of a suit for treble damages under Section 205 of the Housing and Rent Act of 1947.

2. Whether twenty-five tenants with twenty-five distinct causes of action, whose separate claims are alleged in twenty-five separate counts, may unite in one suit on the theory under Rule 20 of the Federal Rules of Civil Procedure when none of the claims originated from the same transaction or a series of transactions.

3. Whether this court has the power to issue the writ to the district court before the entry of a final judgment and without prosecuting an appeal to the Court of Appeals.

## REASONS FOR THE ALLOWANCE OF THE WRIT.

1. There is a conflict in the decisions of the United States Courts of Appeal on the question whether the jurisdictional amount required under section 1331 of the Judiciary Act of 1948 (T 28 U. S. C. A. § 1331) is indispensable under the Housing and Rent Act of 1947. The district courts in the Third Circuit are compelled to follow the decision of their Court of Appeals and are dismissing the actions for want of jurisdiction. The district courts in the Seventh Circuit are compelled to follow the decisions of their circuit and sustain the jurisdiction. The district courts of the other circuits follow one or the other decisions, and there is a great deal of confusion as a result of such conflicting decisions. The writ should be issued to harmonize the decisions on this important federal question.

2. The same reason which prompted this court to allow writs to the District Courts to review an identical order in *United States Alkali Association* v. *U. S.*, 325 U. S. 196, and in *De Beers Mines* v. *U. S.*, 325 U. S. 212, is applicable here. The hardship in the instant case and in the many cases which are pending in the district courts, are not any less than in the two cases in which the writs were issued. If the jurisdiction is lacking, all the pending actions which now clog the Federal Courts, should be disposed of, and the parties should be relegated to courts of competent jurisdiction in the various States. The litigants would not be compelled to go through expensive trials and to uselessly appeal on the jurisdictional question to a court of appeals which had already decided the issue in conflict with other decisions, for the purpose of obtaining a review by this court.

3. Section 1254(1) (T. 28 U. S. C. A. § 1254) expressly authorizes the granting of a writ of certiorari before judgment, and section 1651(a) (T. 28 U. S. C. A. § 1651) authorizes the issuance of the writ to the District Court under the construction of prior § 262 of the Judicial Code, and the issuance of the writ at any time before judgment is expressly authorized by § 2101 (T. 28 U. S. C. A. § 2101(a)). The above sections in the new Judiciary Act were designed to liberalize the issuance of the writ and to remove any doubt. The writ should be issued under the exceptional circumstances as set forth above.

## PRAYER FOR RELIEF.

Petitioners, therefore, pray that this court may grant a Writ of Certiorari to the United States District Court for the Northern District of Illinois, Eastern Division, to the end that its order overruling the motion to dismiss be reversed, with directions to dismiss the action for want of jurisdiction.

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## BRIEF IN SUPPORT OF PETITION.

### Jurisdiction Invoked.

The jurisdiction of this court is invoked under Sections 1254, 1651 and 2101 of the Judiciary Act of 1948 (T. 28 U. S. C. A. §§ 1254, 1651 and 2101).* The right to issue the writ to the District Court is based on § 1651, which is identical with former § 262, under which this court held that it may issue the writ to the District Court prior to judgment when it overruled a motion to dismiss on jurisdictional grounds, where the case involves unusual hardships (*United Alkali Export Association* v. *U. S.*, 325 U. S. 196; *De Beers Mines* v. *U. S.*, 325 U. S. 212, 217).

## OPINION BELOW.

No opinion below was filed by the District Court, but in a memorandum which it furnished the attorneys, and which it did not make a part of the record, the court stated

* § 1254 of the Judiciary Act of 1948 provides:
"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."
§ 1651 of the Judiciary Act of 1948 provides:
"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law."
§ 2101 of the Judiciary Act of 1948 provides:
"(d) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment."

that the decision of the Court of Appeals for this circuit that $3,000 was not necessary to confer jurisdiction, was binding upon it, and that under Rule 20, the joinder of the distinct causes of action was permissible.

## A STATEMENT OF THE CASE.

A complaint at law and at equity was filed on September 3, 1948 in the District Court for the Northern District of Illinois, seeking treble damages under the Housing and Rent Act of 1947. The complaint consists of twenty-three counts, and each count has a separate plaintiff and a distinct cause of action (Tr. 3-15).

The first count alleged (Tr. 3) that the petitioners received and accepted as rent from respondent, Albert Berest, $92.00 per month from October 1, 1947 to June 19, 1948, and $150.00 per month from June 19, 1948 to September 19, 1948, for apartment 202 in the building owned by the petitioners, while maximum rent during said period was $80.00 per month. He sued for treble damages in the amount of $936.00 (Tr. 3). Each count thereafter (Tr. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15) was identical, except that the plaintiff, the apartment, and the amount were different, and no single count had the jurisdictional amount of $3,000. Thereafter, the court allowed the filing of counts 24 and 25, and three additional plaintiffs were added by a supplement to the complaint (Tr. 24, 25). The controversy between the parties was whether or not the apartment hotel was decontrolled (Tr. 19).

Petitioners have filed three defenses: (1) That the court was without jurisdiction of the subject matter because of the absence of the requisite jurisdictional amount of

$3,000.00; (2) That the plaintiffs had no right to unite in one suit, as their actions did not originate from the same transaction or a series of transactions,* and (3) the merits on the ground that the apartment hotel was decontrolled (Tr. 20-21). On November 1, 1949, the district court overruled the two defenses, which were treated as a motion to dismiss, and allowed the filing of the supplemental complaint, joining the additional plaintiffs (Tr. 25).

* Rule 20 of the Federal Rules of Civil Procedure provides:
"(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action."

## ARGUMENT.

### I.

**There is a Conflict in the Decisions of the United States Courts of Appeal on the Question Whether the Jurisdictional Amount is Necessary to Confer Jurisdiction Under the Housing and Rent Act of 1947, and the Writ Should Issue to Harmonize the Decisions on This Important Federal Question.**

The United States Court of Appeals for the Third Circuit held in *Fields* v. *Washington,* 173 F. (2) 701, that the jurisdictional amount was *indispensable* under the Housing and Rent Act of 1947, and dismissed the proceedings for want of jurisdiction. The *opposite conclusion* was reached by the Court of Appeals for the Seventh Circuit with Mr. Justice Minton dissenting.

The majority opinion in *Adler* v. *Northern Hotel Co.,* 175 F. 2d 619, said (p. 620):

> "Defendants call attention to the case of *Fields* v. *Washington,* 3 Cir., 173 F. 2d 701, and make the point that a federal court in order to be competent within the meaning of the Housing and Rent Act, *supra,* must find its jurisdiction under some provision of law existing at the time of the enactment of § 205 as part of the Act; they claim that the Act contains no general grant of jurisdiction, and argue that § 205 means any federal court authorized by a pre-existing jurisdictional grant to hear and determine a particular case, requiring as one of its conditions an amount in controversy in excess of $3,000. It does not appear that the court in *Fields* v. *Washington, supra,* considered § 205(e) of the Emergency Price Control Act, or that it was called to its attention."

In the minority opinion written by Mr. Justice Minton, he said (p. 623):

> "The majority opinion states that when Sec. 205 (c) and (e) of the original Act are read together, 'they produce language in effect identical with § 205 of the Housing and Rent Act.' (The latter the 1947 Act here under consideration.) That the District Court was a court of competent jurisdiction under the original Act, regardless of amount, is because Congress clearly said so when in subsection 205 (c) it gave the District Courts jurisdiction in all controversies under Sec. 205. To repeat, it reads as follows: 'The district courts shall have jurisdiction • • • concurrently with State and Territorial courts, of *all* other proceedings under section 205 of this Act.' This and Sec. 205 (e) are the provisions of the original Act which the majority says we must consider in determining what the 1947 Act means, and on the basis of which it concluded that the two mean just the same thing."

He further said (p. 624):

> "The words '*competent jurisdiction*' were used advisedly. Otherwise, the jurisdiction of this Court and of other Federal courts might have been mooted. Congress dealt with jurisdiction in the 1947 Act in a completely different way than the manner in which it dealt therewith in the original Act. Then too, Congress might very properly have intended to keep the District Courts within their traditional bounds and to relieve them from acting as justice of peace courts.
>
> "The exact question here presented was decided just oppositely by the Third Circuit in an opinion by Judge Maris, Chief Judge of the United States Emergency Court of Appeals, in *Fields* v. *Washington*, 173 F. 2d. 701. I cannot dispose of this carefully reasoned opinion as cavalierly as the majority. I think that Judge Maris, an expert on this type of law, was fully cognizant of Sec. 205 (e) and all the other sections of the original Act as well as of the 1947 Act."

In *Steinfeldt* v. *Haymond,* 175 F. 2d. 768, the Court of Appeals for the Fifth Circuit said (p. 769):

> "Brought by a tenant against his landlord, the suit was for $2100.00 treble damages for rent overcharges of $700.00 claimed to have been exacted between January 1, 1946, and January 6, 1947. Though, therefore, the suit was brought after enactment of the Housing and Rental Act of 1947, the limited jurisdictional provisions of Section 205 of that act, Cf. *Fields* v. *Washington,* [illegible] F. 2d 701, did not apply, and the suit was properly brought under the saving provisions of Sec. 901 (b), 50 U. S. C. A. Appendix."

As a result of these conflicting decisions the District Courts are also not in accord.

In *Hershenrader* v. *Campbell,* 85 F. Supp. 75, the court said (p. 75):

> "In *Fields* v. *Washington,* 3 Cir., 173 F. 2d. 701, 702, a tenant sued the landlord for $672.00 (treble the amount of the alleged overcharge), Attorney's fees and costs, under the 1947 Housing and Rent Act, as amended. The Court dismissed the action for lack of pecuniary jurisdiction. Upon authority of that case and in the light of the reasoning in that opinion, it is obvious that this Court is without jurisdiction in the present case."

It also said:

> "The jurisdiction given in Section 925(c) of Title 50 U. S. C. A. Appendix to District Courts, 'concurrently with State and Territorial courts, of all • • • proceedings under section 205' of the Emergency Price Control Act of 1942 was materially changed in the enactment of the 1947 Housing and Rent Act. In the latter, the jurisdictional grant reads, 50 U. S. C. A. Appendix, § 1895: 'Suit to recover such amount may be brought in any Federal, State, or territorial Court of competent jurisdiction • • •' 'It follows' says the opinion in *Fields* v. *Washington, supra,* 'that the competency of a Federal district court to entertain such

a suit by a tenant must be based upon some other statutory grant of jurisdiction over the subject matter and the parties."

In discussing the *opposite decision* of the Seventh Circuit the court said (p. 75):

> "An opposite conclusion to that reached in *Fields* v. *Washington* is determined by the Court of Appeals of the Seventh Circuit in *Adler* v. *Northern Hotel Company,* 1949, 175 F. 2d 619."

In holding that the reason in the *Fields* case was sound, the court said (p. 75):

> "The clear-cut analysis by the Court in *Fields* v. *Washington* of the jurisdictional grants in the Emergency Price Control Act of 1942 and in the Housing and Rent Act of 1947, indicates that Congress intended to *limit* the jurisdiction of District Federal Courts just as the language used indicates it has done. This Court is without jurisdiction, and this action will be dismissed, without prejudice, however, to plaintiff's right to institute an action in a Court of 'competent jurisdiction.'"

The confusion in the decisions of the District Courts is apparent. The District Courts of the Third and Fifth Circuit are compelled to follow the decisions of their respective circuits, and they are dismissing the suits for want of jurisdiction, while the district courts in the Seventh Circuit are bound by the decision of the Seventh Circuit and are sustaining the jurisdiction. Among the district courts which held that the jurisdictional amount was not required are the decisions in *Sampson* v. *Thomas,* 76 F. Supp. 691; *Adams* v. *Backlund,* 81 F. Supp. 643; *United States* v. *Resch,* 84 F. Supp. 389, 392. As against these, the district courts in the following decisions have held the jurisdictional amount was indispensable: *Fox* v. *34 Hillside Realty Corp.,* 79 F. Supp. 832; *Luftman* v. *Ross,* 75 F.

Supp. 627; *Spieler* v. *Haas*, 79 F. Supp. 835; *McCrae* v. *Johnson*, 84 F. Supp. 220.

The writ should, therefore, issue to harmonize the decisions on this important jurisdictional question.

## II.

**The Writ of Certiorari May Issue to the District Court to Review Its Interlocutory Order Overruling a Motion to Dismiss for Lack of Jurisdiction, and the Writ Will Issue in Exceptional Cases Under the Circumstances Involved in This Case.**

The question whether this court may issue its writ of certiorari to the District Courts to review an interlocutory order overruling a motion to dismiss an action for want of jurisdiction, was clearly decided by this court in two decisions under § 262 of the former judiciary act. Section 1651 of the Judiciary Act of 1948 (T. 28 U. S. C. A. § 1651) takes the place of former § 262.

The identical question was presented to this court in *United States Alkali Export Association* v. *United States*, 325 U. S. 196. There, the District Court, as here, *overruled the motion to dismiss the complaint based on jurisdictional grounds.* The question was whether this court had the power to issue the writ and whether the writ should be issued. This court held (p. 201) that it had the power to issue the writ and that the *only* question was whether it should use its discretionary power to issue the writ. In deciding in favor of the issuance of the writ, this court pointed out that there were *exceptional circumstances* under which the writ would issue. There, the court said (p. 204):

> "The hardship imposed on petitioners by a long postponed appellate review, coupled with the attendant infringement of the asserted Congressional policy of conferring primary jurisdiction on the Commission,

together support the appeal to the discretion of this Court to exercise its power to review the ruling of the district court in advance of final judgment. *The case is analogous to those in which this Court has, by writs issued under Section 262, reviewed the action of district courts, alleged to be in excess of their authority,* by which they have foreclosed the adjudication of rights or the protection of interests committed to the jurisdiction of a state officer or tribunal, see *In re Chetwood, supra*; *McClellen* v. *Carland, supra, Ex parte Metropolitan Water Co.,* 220 U. S. 539 *Ex parte Skinner & Eddy Corp.,* 265 U. S. 86, *Maryland* v. *Soper,* (No. 1) 270 U. S. 9, *Ex parte Northern Pacific R. Co.,* 280 U. S. 143; *Colorado* v. *Symes,* 286 U. S. 510; or by which they have deprived a party of a trial by jury. *Ex parte Simons,* 247 U. S. 231; *Ex parte Peterson,* 253 U. S. 300, 305."

This case was cited with approval in *De Beers Mines* v. *United States,* 325 U. S. 212, 217.

Under the new Judiciary Act it is provided (T. 28, U. S. C. A. § 1254 (1)) that this court may issue the writ "before or after rendition of judgment or decree" and it further provided (T. 28, U. S. C. A. § 2101 (d)) that "an application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the Court of Appeals may be made at *any* time before judgment."

It would not only be a great hardship to Petitioners to compel them to proceed with the trial in the District Court and later appeal to the Court of Appeals which has already decided this issue in favor of the jurisdiction and thereafter apply for the Writ of Certiorari to this Court on the jurisdictional question, but it would place an unnecessary burden on the district courts.

There are many similar suits pending in the District Court involving the identical question. In the *Adler* case,

*supra,* after the Court of Appeals ruled in favor of the jurisdiction, it reversed the case on the merits (..... F. (2) .....) and it will be necessary now to retry the case, and in the event of a judgment against the defendants, it will require another appeal which may lead to a review on the jurisdictional question, and if this court should finally hold that there was an absence of jurisdiction, the entire proceedings could have been avoided. For these reasons the discretionary writ should be issued by this court.

## III.

**Several Plaintiffs May Not Unite in One Suit Against Several Defendants for Distinct Causes of Action Which Did Not Originate From the Same Transaction or Series of Transactions.**

In *Hooper & Co.* v. *Samuel M. Langstrom,* 56 F. Supp. 577, the Court considered Rules 20-21 and 57 of the Federal Rules of Civil Procedure in a case involving the *joinder of distinct causes of action by several plaintiffs.* A motion to dismiss the complaint on the ground of misjoinder was made by Samuel M. Langstrom, one of the defendants. After citing from the rule that all persons may join in one action as plaintiffs if they assert any right to relief, jointly, severally or in the alternative in respect of or arising out of the same transaction or occurrence or series of transactions or occurrences, or if any question of law or fact common to all of them will arise in the action, and after pointing out that under the Federal rules of misjoinder of parties misjoinder does not give ground for dismissal of an action, the Court pointed out that there was not only a misjoinder of parties, but *a misjoinder of causes of action,* and that where a misjoinder of causes of action occurs, *the complaint must be*

*dismissed as to the cause which is misjoined.* At page 581, the court said:

> "The right to relief asserted under each patent does not arise under the same transaction and there is no common question of law or fact as to both defendants that might arise. Upon evidence submitted, there is no basis upon which these two causes can be joined under Rule 20 (A) *supra,* and they must, therefore, be severed, Rule 21 *supra.*"

The Court thereafter sustained the motion to dismiss.

In an opinion rendered by Judge LaBuy in *Colburn* v. *Birr,* 4 F. R. D. 391, he said:

> "Rule 20 cannot be applied for that rule pertains to the 'same transaction, occurrence or series of transactions or occurrences.' If the plaintiff had included the Martin and Grundwald patents in his original complaint, it would have been a misjoinder of causes. *Hooper* v. *Langstrom,* D. C., 56 F. Supp. 577."

The rule that there can be no joinder of distinct causes of action by several plaintiffs which did not arise out of the same transaction or series of transactions was also adopted in *Fleming* v. *Whitemore,* 41 F. Supp. 767, 768.

In *Carl Gutmann & Co.* v. *Rohrer Knitting Mills,* 86 F. Supp. 506, the court said (p. 511):

> "This is not a case where plaintiff alleges a single cause of action but is uncertain as to which of two or more defendants may be liable. Here, while arising out of the same transaction, occurrence, or series of transactions or occurrences, the gravamen of the complaint is not the doing or failing to do a single act by one or more persons, but rather the doing of entirely separate and distinct acts, in the one instance by one corporation and in the other instance by another corporation and four individuals. This is not the alternative situation contemplated by the Rule."

The rule that distinct causes of action may not be joined

in one suit by several plaintiffs was also adopted by the Illinois courts in construing the identical rule under the civil practice act of Illinois (*Gombi* v. *Taylor Washing Machine Co.*, 290 Ill. App. 53, 62).

In applying the law to the Rent Control Act and in holding that persons who lack the jurisdictional amount may not unite to commence an action under the Rent Control Act, in *Fox et al.* v. *34 Hillside Realty Corporation*, 79 F. Supp. 832, the Court says:

> "Plaintiffs urge that jurisdiction is conferred on this court by the Housing and Rent Act of 1947, as amended, 50 U. S. C. A. Appendix § 1881 *et seq.* and by the Declaratory Judgment Act, 28 U. S. C. A. §§ 2201, 2202; that this is an action to enforce a penalty brought under 28 U. S. C. A. § 1355 and that the matter in controversy exceeds the sum of $3,000 exclusive of interests and costs and arises under the Constitution or law of the United States."

In holding that the Court was without jurisdiction of the subject matter, it was said:

> "Plaintiffs may not aggregate their claims. When the demands of the numerous plaintiffs are separate and distinct, each must have a claim in the jurisdictional amount; only when plaintiffs unite to enforce a joint or common interest is aggregation permissible. *Pinel* v. *Pinel*, 240 U. S. 594, 36 S. Ct. 416, 60 L. Ed. 817. In *Luftman* v. *Ross*, S. D. N. Y., 1948, 75 F. Supp. 627, 628, Judge Rifkind wrote:
>
> > 'The contention that the threatened rent increases of all the plaintiffs may be aggregated is ill founded. The plaintiffs in this action clearly assert several rights.'
>
> See also *Hock* v. *250 Northern Ave. Corporation*, 2 Cir., 142 F. 2d 435; *Spieler* v. *Haas*, 79 F. Supp. 835."

We have shown above that there is a conflict between the several Courts of Appeal and the District Courts on the jurisdictional question, and that the right to join the

several causes of action which did not originate from the same transactions or a series of transactions is also a debatable question. Therefore, the writ should be issued.

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